

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



W13a

Appeal Filed:	9/21/04
49th day:	Waived
Substantial Issue found:	6/9/05
Staff:	JB-SC
Staff report:	8/25/05
Hearing date:	9/14/05

## APPEAL STAFF REPORT DE NOVO HEARING

**Appeal Number** .....A-3-SLO-04-061, Oceano Pavilions

**Applicant**.....Oceano Pavilions LLC, Attn: Robert Mueller

**Appellants** .....Commissioners Meg Caldwell and Sara Wan; Airport Land Use Commission of San Luis Obispo County.

**Local government** .....San Luis Obispo County

**Local Decision** .....D010378P, Approved with Conditions (August 10, 2004)

**Project location** .....Approximately 200 feet north of Pier Avenue within the community of Oceano, San Luis Bay Planning Area, San Luis Obispo County (APN 061-011-042).

**Project description** .....Construction of a 16-unit hotel and manager's unit with underground parking.

**File documents**.....San Luis Obispo County Certified Local Coastal Program (LCP); and San Luis Obispo County CDP Application File D010378P.

### Staff recommendation ...Approval with Conditions

#### Summary of Staff Recommendation:

The Applicants propose to demolish and replace an existing single-story commercial building and asphalt parking lot with a new three-story 16-unit hotel, manager's quarters, and 20-space underground parking garage. The project is located on the inland side of Strand Avenue, approximately 200 feet north of Pier Avenue, in the community of Oceano. The standard of review is the San Luis Obispo County certified Local Coastal Program (LCP) and Public Access and Recreation policies of the Coastal Act.

The proposed project raises concerns regarding new development adjacent to environmentally sensitive dune habitat (ESHA). The project site is located adjacent to undeveloped coastal dunes of the Oceano Dunes State Vehicular Recreation Area (ODSVRA), and within the larger Nipomo Dunes complex. The LCP protects coastal dunes from development impacts by, among other things, requiring a buffer from the identified resource. In this case, the proposed project does not include a buffer. As a result, the project would result in significant direct, indirect, and cumulative impacts to adjacent dune habitats.

Staff recommends that the Commission **approve with conditions** a coastal development permit for a



**California Coastal Commission**  
**September 2005 Meeting in Eureka**

Staff: J. Bishop Approved by:

project that avoids adverse impacts to sensitive dune habitat, and maximizes the public's ability to access the coast. To accomplish this, staff recommends the permit be conditioned to require:

- Submittal of Final Project Plans that include a 25-foot dune buffer area on the property, and limit roadway development within undeveloped rights-of-way to the minimum needed to meet access and fire safety needs.
- Placement of a Deed Restriction on the property limiting allowable uses within the 25-foot buffer area to those that will not have adverse affects on adjacent dune habitats.
- Restoration of the dune habitat within the Smith Avenue right-of-way, as necessary to stabilize the dunes in a manner that will minimize the need for future sand manipulation, and offset impacts of project construction.
- Submittal of a Construction Plan that provides for the installation of protective fencing, controls the discharge of pollutants, and includes biological monitoring during construction.
- Submittal of a Drainage and Erosion Control Plan to protect coastal water quality.
- Archaeological monitoring during ground disturbing activities.
- Preparation of an Avigation Easement for development within the Oceano Airport Review Area.

Only as conditioned can the project be found consistent with the San Luis Obispo County certified LCP and the Public Access and Recreation policies of the Coastal Act.

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## 1. Project Procedural History

The County Board of Supervisors approved the project on August 10, 2004. This decision was appealed to the Coastal Commission by Commissioners Meg Caldwell and Sara Wan and the County Airport Land Use Commission. On June 9, 2005 in San Pedro, the Commission found that the Commission appeal raised a substantial issue in terms of the project's consistency with the San Luis Obispo County LCP. As a result, the Commission took jurisdiction over the coastal development permit (CDP) application.

In finding substantial issue, the Commission directed Staff and the applicant develop additional information regarding an appropriate buffer area between the project and the adjacent dunes. In addition, the Commission indicated that project plans should be updated. Commission Staff met with the Applicant on August 3<sup>rd</sup> to review the outstanding issues. Although no updated plans have been submitted, the Applicant has indicated that the site plans would not change and that the building footprint and location of parking spaces would remain basically the same. The only modifications to the project would involve interior changes to the size and configuration of the guest units and a minor reconfiguration of underground parking spaces. This staff report incorporates the information and analysis up to and including the substantial issue hearing, as well as the additional information obtained since the June hearing.

## 2. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

***MOTION:*** *I move that the Commission approve Coastal Development Permit Number A-3-SLO-04-061 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:** Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:** The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program and the public access and recreation policies of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

## 3. Conditions of Approval



## A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## B. Special Conditions

1. **Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Final Project Plans to the Executive Director for review and approval. The Final Project Plans shall be consistent with the following requirements:

- (a) **Dune Buffer Area.** The Final Project Plans shall provide a minimum first floor dune buffer area of 25 feet measured from the northern property line to the interior of the parcel. Development is prohibited within the dune buffer area, except for uses allowed pursuant to Special Condition 2 of this permit. The Final Project Plans shall clearly identify and label the dune buffer area in site plan view.
- (b) **Building Height.** Building height shall not exceed 35 feet above average natural grade.
- (c) **Underground Parking.** Plans shall indicate the dimensions and location of 20 underground parking spaces.
- (d) **Public Rights-of-Way.** Final Plans shall limit development within existing public rights-of-way as follows:
  1. Smith Avenue –No development shall occur within the Smith Avenue right-of-way other than temporary construction activities conducted in accordance with Special Condition 5 and dune restoration activities required by Special Condition 3.
  2. Strand Avenue and Strand Way – Roadway improvements to Strand Avenue and Strand Way



shall not extend beyond the northernmost portion of the hotel building except, where necessary, the minimum amount needed to meet fire safety and access needs. All improvements within the Strand Avenue and Strand Way rights-of-way shall be available for general public use (e.g. roads, paths, patios, benches, etc.).

- (e) **Exterior Design Elements.** Exterior elevations and building elements shall be consistent with the Design Guidelines for Commercial Retail areas as specified in the Oceano Specific Plan. The applicant shall submit a final color board and elevations for review and approval of the Executive Director. The final color board and elevations shall be accompanied by evidence of review and approval from the San Luis Obispo County Planning Director. The exterior elevations shall identify all finished materials. All exterior finishes shall consist of earthen tone colors that blend with the surrounding dune environment. Mechanical equipment (i.e. electrical supply panels, air conditioning and heating devices, water and gas meters, pad mounted transformers, satellite dishes, etc.) is prohibited in the dune buffer area, and shall not be visible from public views unless they are completely screened by walls and/or landscaping, or installed in underground vaults. All detached structures and other site improvements, including but not limited to, the points of ingress and egress, parking areas, loading areas, turnarounds, sidewalks, crosswalks, trash and recycling enclosures, utility connections, easements, public access paths, retaining walls, foundations, and benches must be shown on the final plans, including elevations.
- (f) **Lighting.** Plans shall identify the height, type, location and intensity of all exterior lighting. Exterior lighting shall be limited to that which is necessary to illuminate driveways, pathways, and entrances to structures. All lighting shall be low-level light sources and shall be downward directed and designed so that it does not produce any light or glares off-site. All lighting fixtures shall be shielded so that neither the lamp nor the related reflector interior surface is visible off-site. Light hoods shall be dark colored. Glass windows and doors on guest units on the north side of the building shall be treated/tinted so that interior lights produce minimal light or glare off-site.

The Permittee shall undertake development in accordance with the approved Final Project Plans. Any proposed changes to the approved Final Project Plans shall be reported to the Executive Director. No changes to the approved Final Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

## 2. Dune Buffer Area Restrictions.

- A. No development, as defined in section 30106 of the Coastal Act shall occur in the Dune Buffer Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive director issues for this permit except for:
1. Dune restoration, landscaping, and stabilization activities conducted in accordance with the Dune Restoration and Stabilization Plan approved by Special Condition 3 of this permit.
  2. Low intensity public access improvements (e.g. walking paths and/or dune boardwalks). Any low intensity public access improvements must be submitted for review and approval by the Executive Director.



3. Building maintenance activities including, but not limited to, window washing, painting, trash and debris removal.
4. Sand management activities to address windblown sand only if conducted in accordance with Special Condition 4 of this permit.
5. Underground parking, provided that all structural development will be completely buried under native dune sands, in a manner than blends with natural dune contours, following project construction.
6. Low impact fencing less than 4' in height that allows continued movement of sand and native wildlife, and allows penetration of light, wind, and rain.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE THIS PERMIT (NOI), the Applicant shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described in special condition 1(a) of this permit.

**3. Dune Restoration and Stabilization Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for review and approval of the Executive Director, two copies of a Dune Restoration and Stabilization Plan prepared by a qualified restoration ecologist, providing for the planting and maintenance of native dune plants in the portion of the Smith Avenue right-of-way between Strand Way and Strand Avenue. The plan shall consider the specific condition of the site including soil, exposure, temperature, moisture, and wind, as well as restoration goals. The plan shall include, at a minimum, the following components:

- (a) A baseline assessment, including photographs, of the current physical and ecological condition of the proposed restoration site, a description and map showing the area and distribution of vegetation types, and a map showing the distribution and abundance of sensitive species. Existing vegetation, and sensitive species shall be depicted on a map that includes the footprint of the proposed restoration.
- (b) A description of the goals of the restoration plan, including, as appropriate, topography, hydrology, vegetation types, sensitive species, and wildlife usage.
- (c) A description of planned site preparation and invasive plant removal.
- (d) A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, plant installation, erosion control, irrigation, and remediation. The planting palette shall be made up exclusively of native dune plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural varieties shall not be used.
- (e) A plan for managing existing and future public use in and around the restoration area as a means to access the beach. The plan shall provide for a 10-foot wide access route either within or immediately adjacent to the restoration area as well as within the Strand Avenue and Strand Way rights-of-way. To prevent disturbance of the restoration area by unauthorized vehicle use, the



plan shall provide for general access controls (e.g. boardwalks, signs, bollards, post and wire, fencing, etc.) at the terminus of Strand Avenue and Strand Way road improvements, as necessary to manage access consistent with dune restoration goals and objectives.

- (f) A plan for documenting and reporting the physical and biological “as built” condition of the site within 30 days of completion the initial restoration activities. This is a simple report describing the field implementation of the approved restoration program in narrative and photographs, and reporting any problems in the implementation and their resolution.
- (g) The plan shall describe and provide for initial maintenance, monitoring, establishment of success criteria, and replacement of vegetation as necessary, for a period of five years after initial installation. Monitoring reports, submitted to the Executive Director for review and approval, are required annually for a period of five years after initial installation.
- (h) Five years from the date of implementation, the Permittee or successors in interest shall submit, for the review and approval of the Executive Director, a restoration monitoring report, prepared by a qualified restoration ecologist, that certifies the on-site landscaping is in conformance with the approved plan along with photographic documentation of plant species and plant coverage.
- (i) If the monitoring report indicates the restoration is not in conformance with or has failed to meet the performance standards specified in the restoration plan approved pursuant to this permit, the Permittee, or successors in interest, shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified restoration ecologist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan
- (j) The Dune Restoration and Stabilization Plan shall be reviewed by the California Department of Parks and Recreation (State Parks) and the California Department of Fish and Game. Any comments received by these agencies shall be addressed to the satisfaction of the Executive Director of the Coastal Commission. All dune landscape and stabilization activities shall be carried out in accordance with the approved plan.

**4. Sand Management and Disposal Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for Executive Director review and approval a Sand Management Plan that identifies the location, method, and frequency of all sand removal activities associated with project construction; addresses potential habitat impacts associated with sand moving activities; and, includes authorizations for such activities by all affected property owners. The plan shall provide for the retention of excavated sand within the surrounding dune system to the maximum extent feasible among other means by using sand excavated during project construction to backfill the project site and restore natural dune contours adjacent to the project site. The Permittee shall consult with State Parks to determine appropriate disposal sites within the Oceano dune complex for any excess excavated sand. Disposal of the sand, or use of the sand to backfill areas onsite, shall be done in such a way as to mimic natural dune formations and avoid smothering of dune vegetation. Sand disposal sites shall be subject to the review and approval of State Parks and the Executive Director. Any proposal to remove sand from site or adjacent dune areas beyond that identified by the approved Sand Management and Disposal Plan shall be subject to the approval of a separate Coastal Development Permit or amendment to this permit.



**5. Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Construction Plan to the Executive Director for review and approval. The Construction Plan shall identify all measures to be taken to protect dune habitat and water quality to the maximum extent feasible, and shall, at a minimum, include:

**(a) Construction Fencing.** Construction activities, including the storage and staging of construction materials, shall be limited to the minimum necessary to construct the project and shall avoid encroachment into the dunes to the maximum extent feasible. Construction activities, including the storage and staging of materials shall not interfere with public use of beach parking and access facilities. Construction areas shall be designated by the construction plan delineated on-site by temporary construction fencing. The construction zone fencing shall be maintained in good working order for the duration of the construction. No construction activities shall take place, and no equipment or material storage shall occur, outside of the established construction zone. CONSTRUCTION SHALL NOT COMMENCE UNTIL ALL CONSTRUCTION ZONE FENCING IS COMPLETELY INSTALLED AND OPERATIONAL.

**(b) Biological Monitor.** A qualified biological monitor shall be present at the site as follows:

- (1) Prior to construction, the monitor shall survey the site and immediately adjacent areas for the presence of Western snowy plover, California least tern, and silvery legless lizard. The biologist shall submit a letter to the Executive Director prior to construction verifying that s/he has been retained and shall provide verification that the area proposed for disturbance does not contain nesting sites or individuals of the species. If nests or juveniles are found, all activity shall be postponed until the nest has hatched, and all juveniles have left the area.
- (2) During construction, the biological monitor shall make weekly site visits to survey the site and immediately adjacent areas for the presence of species identified in b (1) above. The monitor shall verify that all construction zone fencing is in place and functioning as intended. Any repair or maintenance to the fencing deemed necessary by the monitor shall be completed under the monitor's supervision.
- (3) After all construction activities are completed, the construction zone fencing shall be removed under the supervision of the monitor.

The biological monitor shall have the authority to halt all or some construction activities and/or modify all or some construction methods as necessary to protect habitat and individual sensitive species. The biological monitor shall complete monitoring reports for each day that the monitor is present that, at a minimum, indicate the date and time of work, weather and other site conditions, the monitoring biologist's name, project activity/progress, any listed species observed, any measures taken to repair and/or maintain protective fencing, and any construction modifications required to protect habitat. These reports shall be compiled and submitted to the Executive Director upon cessation of construction as part of a construction monitoring report.

**(c) Water Quality BMPs.** All erosion control/water quality best management practices to be implemented during construction and their location shall be noted. Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction zone to prevent construction-





related runoff, sediment, and/or debris from entering into the dunes, beach, and/or the Pacific Ocean, and any existing storm drain inlets. Provisions shall be made for stockpiling and covering any graded soils, equipment, and/or materials. A wet weather contingency plan shall be identified that clearly states what actions will be taken in the event of precipitation events to avoid off-site impacts due to runoff emanating from the construction zone. ALL EROSION, SEDIMENT, AND OTHER WATER QUALITY CONTROLS SHALL BE IN PLACE PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AS WELL AS AT THE END OF EACH DAY.

- (d) **Good Housekeeping.** The construction site shall maintain good construction site housekeeping controls and procedures, including: (1) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all dewatering operations shall include filtration mechanisms; (2) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage or existing drain inlet; (3) concrete rinsates shall be collected and properly disposed of off-site and they shall not be allowed to enter any natural drainage areas or existing drain inlet; and (4) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather.
- (e) **Dewatering.** The Permittee shall submit a dewatering plan to the Executive Director for review and approval, and provide evidence that the dewatering plan has been approved by the Regional Water quality Control Board, or that no such approval is necessary.
- (f) **Work Schedule.** All work shall take place during daylight hours with the following exception: any construction that occurs after sunset shall be limited to interior (of structures) work and shall be subject to the same lighting parameters as established for the completed structure by Special Condition 1.

All requirements of this condition above shall be enforceable components of this coastal development permit. All requirements of this condition shall be specified as plan notes on the Construction Plan, and the plan notes shall indicate that they shall apply for the duration of construction of the approved development. The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 6. **Drainage, Erosion, and Sedimentation Control Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant shall submit, for Executive Director review and approval, two sets of Drainage, Erosion, and Sedimentation Control Plans and that incorporate the following provisions:



**Implementation of Best Management Practices During Construction.** The Drainage and Erosion Control Plans shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook and the criteria established by the San Luis Obispo County Resource Conservation District. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas. The plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated off site maintenance areas; any the immediate clean-up of any leaks or spills.

The plans shall indicate that **PRIOR TO THE COMMENCEMENT OF GRADING**, the applicant shall delineate that the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

**Post Construction Drainage.** The drainage plan shall identify the specific type, design, and location of all drainage infrastructure and Best Management Practices (BMPs) necessary to ensure that post construction drainage from the project, including runoff from the roof, driveways, parking areas and other impervious surfaces, does not result in erosion, sedimentation, or the degradation of coastal water quality. The capacity of drainage features and BMPs shall be adequate to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. All drainage features shall be located outside of sensitive habitat areas, and shall be limited in size and footprint to the minimum necessary to achieve effective drainage and erosion control.

The Permittee shall be responsible for implementing and maintaining drainage, erosion, and sedimentation control measures and facilities for the life of the project. This shall include performing annual inspections, and conducting all necessary clean-outs, immediately prior to the rainy season (beginning October 15), and as otherwise necessary to maintain the proper functioning of the approved system.

The Permittee shall undertake development in accordance with the approved Plans. Any proposed changes to the approved Plans shall be reported to the Executive Director. No changes to the approved Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 7. Archaeological Monitor.** A qualified archaeological monitor and Native American representative approved by the Executive Director **PRIOR TO THE COMMENCEMENT OF CONSTRUCTION** shall be present during any construction or pre-construction activities that involve ground



disturbance. Should archaeological resources be discovered at the project site during any phase of construction, the Permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist in coordination with interested Native Americans, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.

- 8. Hazards - Airport Review Area.** The Permittee hereby agrees to San Luis Obispo County conditions 35 through 40 regarding Airport Review Area requirements (see Exhibit C).
- 9. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from heavy storm damage, flooding, earth movement, and its location within the sphere of influence of the Oceano Airport Review Area; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 10. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
- 11. County Conditions.** All conditions of San Luis Obispo County's approval pursuant to planning authority other than the Coastal Act continue to apply (e.g., conditions # 32, 33, 42, 43, and 44).



### 3. De Novo Permit Findings and Declarations

#### A. Project Location and Description

The 11,800 square foot project site is located on the inland side of the terminus of Strand Avenue, approximately 200 feet north of Pier Avenue, in the Community of Oceano. Pier Avenue is two-lane road used by residents and visitors accessing the nearby Pismo State Beach/Oceano Dunes Recreational Vehicular Area (ODSVRA). Commercial uses (a beach dune buggy rental and repair shop is just south of the site), beach vacation rentals, condominiums, campgrounds, single-family residences, Pismo State Beach, and the Oceano Dunes State Vehicular Recreation Area characterize the surrounding area.

The project site is located adjacent to coastal dune habitat primarily owned by State Parks. The dunes immediately adjacent and to the north of the project site are unstable and in many areas devoid of vegetation which causes windblown sand to accumulate on the project site. The northern property line has been completely covered by encroaching beach dunes. A 40-foot wide unimproved road right-of-way (Smith Avenue) is located immediately adjacent to the northern property and within the dune habitat.

The proposed project consists of the construction of a 16-unit three-story hotel, a manager's unit, underground parking garage, and associated site improvements. An asphalt surface parking lot and single-story cement block building cover the existing site. The existing building and asphalt parking lot will be removed prior to construction. The underground parking facility would be accessed by Strand Way, a twenty-foot right-of-way on the eastern side of the property.

#### B. Coastal Development Permit Findings

##### 1. Environmentally Sensitive Habitat Areas (ESHA)

###### a. Applicable Policies

The LCP is very protective of sensitive resource systems such as dunes and other environmentally sensitive habitat areas (ESHA). The following LCP policies and ordinances are relevant to the protection of environmentally sensitive dune habitat adjacent to the project site:

***Policy 1 - Land Uses Within or Adjacent to Environmentally Sensitive Habitats:*** *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resource shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

***Policy 2 – Permit Requirement:*** *As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for*



*monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

**Policy 3 – Habitat Restoration:** *The county or Coastal Commission should require the restoration of damaged habitats as a condition of approval when feasible...[THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.170 OF THE CZLUO].*

**Policy 29 – Protection of Terrestrial Habitats:** *Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.*

*Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

**Policy 31 – Design of Trails In and Adjoining Sensitive Habitats:** *San Luis Obispo County, or the appropriate public agency, shall ensure that the design of trails in and adjoining sensitive habitat areas shall minimize adverse impact on these areas. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

**Policy 36 - Protection of Dune Vegetation:** *Disturbance or destruction of any dune vegetation shall be limited to those projects which are dependent upon such resources where no feasible alternatives exist and then shall be limited to the smallest area possible. Development activities and uses within dune vegetation shall protect the dune resources and shall be limited to resource dependent, scientific, educational and passive recreational uses. Coastal dependent uses may be permitted if it can be shown that no alternative location is feasible, such development is sited and designed to minimize impacts to dune habitat and adverse environmental impacts are mitigated to the maximum extent feasible.*

*Revegetation with California native plant species propagated from the disturbed site or from the same species at adjacent sites shall be necessary for all projects. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD]*

**CZLUO Section 23.05.034(c) – Grading adjacent to Environmentally Sensitive Habitats.** *Grading shall not occur within 100 feet of any Environmentally Sensitive Habitat Area as shown on the Land use Element:...*

*(2) Within an urban service line when grading is necessary to locate a principally permitted use and where the approval body can find that the application of the 100-foot setback would render the site physically unsuitable for a principally-permitted use. In such cases, the 100-foot setback shall only be reduced to a point where the principally-permitted use, as modified as much as practical from a design standpoint, can be located on the site. In no case shall grading occur closer than 50 feet from the Environmentally Sensitive Habitat or as allowed by planning area*



*standard, whichever is greater.*

***CZLUO Section 23.07.170 – Environmentally Sensitive Habitats:***

***d. Development standards for environmentally sensitive habitats:***

- 1) New development within or adjacent to the habitat shall not significantly disrupt the resource.*
- 2) New development with the habitat shall be limited to those uses that are dependent upon the resource.*
- 3) Where feasible, damaged habitats shall be restored as a condition of development approval.*
- 4) Development shall be consistent with the biological continuance of the habitat.*
- 5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provision of Section 23.05.034c (Grading Standards).*

***CZLUO Section 23.07.176 – Terrestrial Habitat Protection:*** *The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.*

***a. Protection of vegetation:*** *Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Developments shall be sited to minimize disruption of habitat.*

***b. Terrestrial habitat development standards:***

- 1) Revegetation..*** *Native plants shall be used where vegetation is removed.*
- 2) Area of disturbance.*** *The area to be disturbed by development shall be shown on a site plan. The area which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.*
- 3) Trails.*** *Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.*

In addition to the policies and ordinances listed above, the Oceano Specific Plan contains relevant development standards for the Pier Avenue and Beach Area:

***Standard 9- Pier Avenue & Beach Area:*** *New development within or adjacent to environmentally sensitive habitat areas (ESHA's) must comply with the ESHA resource protection policies of the LCP. Study empty lots in coastal habitats. Clarify ESHA boundaries.*

**b. Dune Habitat Protection**

Coastal dunes are a type of terrestrial habitat (TH) under the LCP. The LCP designates coastal dune TH



as an environmentally sensitive habitat area (ESHA). Development adjacent to ESHA's and holdings of the State Department of Parks and Recreation must be sited and designed to prevent impacts that would significantly degrade such areas and must be compatible with the continuance of such habitat areas (Policies 1, 2, and 29). The LCP protects dune ESHA from development impacts by limiting grading and disturbance of native dune vegetation and requires disturbed sites to be revegetated with native dune plants (Policy 36 and CZLUO 23.05.034(c)). To limit encroachments into ESHA and avoid ongoing disturbances of the resource, the Oceano Specific Plan requires a buffer from the identified resource.

#### Coastal Dune System as ESHA

The Oceano Dunes system is considered an environmentally sensitive habitat area (ESHA) because coastal dunes are an extremely limited environmental resource of statewide significance. The Commission has identified coastal dunes, even degraded dunes, as ESHA in recognition of the fact that both the physical habitat and the associated natural community is rare in California and easily disturbed by human activities. Historically, the Commission has placed high priority on the protection and preservation of dune systems. On the Central Coast, this includes the Nipomo Dunes, Asilomar Dunes, and the Del Monte Dunes. The significance of the overall natural resource values of Oceano Dunes complex is well recognized, as is the potential to restore and enhance these values in degraded areas.

Oceano Dunes is a dynamic system where wind shifts the shape of the ground, rainfall rapidly percolates out of reach, and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. This dynamic system allows specially adapted dune species a competitive advantage over other typical coastal bluff flora found along the central coast of California. Therefore, the overall growing area ("habitat") needed over the long run is vastly larger than the area occupied by the plants at any one given time. This also explains why the entire dune surface, not just the locations where the plants (and animals) are found in any one particular year or time must be considered ESHA. As the Commission has often observed, developed areas of dune systems like Oceano frequently revert back to dune habitat (self-restore) over time when development is removed or not maintained. In some areas of Oceano, such as the proposed development site, dunes are being formed on paved streets, parking lots, and already developed areas.

In summary, the property lies within a geographical area known for its occurrence of native plant and animal species restricted to coastal dune systems, including those listed as endangered or threatened under Federal and/or State regulations. These coastal dunes are communities designated as high priority in the California Department of Fish and Game (CDFG) Inventory. Coastal dunes are also recognized as environmentally sensitive in the San Luis Obispo County's Land Use Plan. Therefore, native dunes meet the definition of Environmentally Sensitive Habitat Area (ESHA) under the certified LCP.

#### ESHA Identification on the Project Site

The Oceano Specific Plan (Standard 9) requires that ESHA boundaries be studied and clarified in the Pier Avenue and Beach Area. As described previously, the project site is located adjacent to undeveloped coastal dune habitat primarily owned by State Parks. The dunes immediately adjacent and within the 40-foot wide Smith Avenue road right-of-way are unstable and in many areas devoid of vegetation. The northern property line has been completely covered by encroaching beach dunes with windblown sand spilling over onto the sites paved parking lot.

In this case, the northern property line coincides with the ESHA boundary. The encroaching dune



formation and windblown sand spilling over onto the paved property is not currently ESHA but may eventually revert to dune habitat if left undisturbed. The northern edge of the site is heavily trafficked by off-road vehicles, humans, and domestic animals. In the northeast corner of the property there is a rubbish pile consisting of old tires, discarded lumber scraps, and trash. The ecological constraints analysis submitted by the Applicant (Levine Fricke, April 2003) describes the encroaching dunes on top of the applicant's asphalt parking lot as "highly disturbed". European beach grass and iceplant make up the majority of vegetative cover of the dunes on top of the paved surface. While there may not be any endangered plants or animals in the building site presently, the nature of the dune habitat is such that they appear at different locations and times. Even though the dune area on the applicant's property has been substantially disturbed by historic development and human activity, there are large swaths of undisturbed dunes with higher quality vegetation, and thus habitat connectivity, directly adjacent and to the north of the property.

In contrast, the Smith Avenue right-of-way (an undeveloped paper street) immediately north of the site and the California State Parks property is ESHA. The few clearings of open sand are mostly attributable to unofficial pedestrian footpaths. Blochman's leafy daisy (*Erigeron blochmaniae*) was observed within the Smith Avenue right-of-way directly adjacent to the property and on State Park property to the north. This plant is a perennial herb that is included on the CNPS 1B List for plants considered rare, threatened, or endangered in California and elsewhere. One stem branch was observed on the property fringe and a large patch (approximately 25 feet by 2 feet) was identified roughly 40 feet from the property boundary. Two large (7 to 9 inches tall) individuals of Dunedelion (*Malcothrix incana*) were observed growing on State Parks property. Dunedelion is a perennial herb on the CNPS 4 Watch List for plants of limited distribution. The presences of these plant species are indicative of the foredune and native dune scrub habitat immediately adjacent to the site and help form the basis for the ESHA determination for the State Park dune complex and within the Smith Avenue right-of-way.

Three special-status wildlife species are known to occur in the vicinity of the project site. Two wildlife bird species that have received the most attention in the Oceano Dunes are the Western snowy plover (*Charadrius alexandrinus nivosus*), and the California least tern (*Sterna antillarum brown*). Both birds are federally listed species. The third special-status animal known to occur in the vicinity of the project site is the silvery legless lizard (*Anniella pulchra pulchra*). The silvery legless lizard is a California Department of Fish and Game (CDFG) Species of Special concern. Although some areas of the project site do contain potentially suitable habitat for this species, no individuals of these species were observed during the site surveys.

#### ESHA Impact Analysis

The proposed project includes a 3-story motel, underground parking garage, and associated hardscape adjacent to coastal dune habitat. The proposed development will have on-going direct and indirect impacts to the ecological functioning of the Oceano dune complex. Such ongoing impacts include interference with sand movement, alteration of hydrological dynamics, shading of dune plants from the structure itself, disturbances associated with the proposed use (noise, lights, etc), and impacts during construction. Avoidance and mitigation of such impacts are necessary to protect dune habitat consistent with LCP requirements.





As discussed, drifting beach dunes cover the northern property boundary (see Exhibit H). According to the Initial Study prepared for the project, this dune area is roughly 1,300 square feet. An aerial photo included in the applicant's *Preliminary Ecological Constraints Analysis* (LFR Levine Fricke 2003) shows this dune area varying in width from approximately 20 to 40 feet along the property line (see Exhibit G). As proposed, this dune formation would be removed to accommodate the commercial project. Although the dune formation on the site is degraded and no sensitive species were identified, sensitive plants were observed immediately adjacent to and in close proximity. Thus, habitat areas potentially suitable for special-status species exist on the project site and will be directly impacted.

The project, as proposed, will likely require a retaining wall on the north side of the property since the top of the dune formation is elevated above the project site. The north side of the building in particular would be difficult to maintain due to the continuing encroachment of wind-blown sand. Given the fact that the project, as proposed, will be constructed directly adjacent to and abutting a migrating dune formation, building maintenance disruptions will occur throughout the life of the project (e.g. irrigation overspray and herbicide/pesticide drift, power washer/window washer blowback, sand moving, painting, etc.). Furthermore, the commercial development brings with it visitor trampling around the occupied building, noise, lights, pets, and general activity that is not conducive to fostering habitat values. The lights that would be visible from the proposed hotel at night may also have some impact on nighttime foraging and movement of species. All of these activities are inconsistent with the protection and biological continuance of coastal dune ESHA.

In addition to ongoing ESHA impacts, the proposed project would result in temporary negative impacts to surrounding ESHA areas during construction. Site preparation will require heavy equipment in the adjacent ESHA areas, staging of construction equipment onsite, and overall construction activities and human presence are expected to adversely affect species and their habitat outside of the construction zone. Although construction impacts are expected to be temporary, such activities can have significant impacts on the short-term productivity of the affected dune habitat. As a result, CZLUO Section 23.05.034(c) prohibits grading within 50' of ESHA. In this case, it is not feasible to accommodate development of the site and meet this requirement.

In conjunction with existing and potential development in the Pier Avenue and beach areas, the cumulative impacts of the project are significant. As discussed in the findings above, the proposed project by itself results in adverse dune impacts. Any such impacts would be exacerbated by similar projects that may take place in the foreseeable future in the general Pier Avenue and beach area. The concern is that these individual parcels adjacent to the dunes will be developed in the future and further encroach into the adjacent dunes. These projects, when taken together, result in additional disturbance and edge effects to the larger dune habitat complex. Any such future development proposals would be subject to the same standards as this proposal. Even though mitigation measures would be required for each new development, impacts will be significant both on an individual and cumulative basis.

#### c. Project Modifications to Result in an Approvable Project

The proposed project would place a large commercial motel directly adjacent to environmentally sensitive dunes. Project modifications are necessary if a project is to be approved at this location consistent with LCP ESHA standards. An approvable project must avoid significant disruption to the adjacent dunes (Policies 1 and 2), and must be sited and designed to prevent impacts that would degrade



such areas (LCP Policy 29). Disturbance or destruction of any dune vegetation shall be limited to the smallest area possible (LCP Policy 36); and a buffer area must be established between the development and the adjacent dune complex (Oceano Specific Plan Standard 9).

The Oceano Specific Plan requires that identified dune ESHA areas on the north side of Pier Avenue be avoided and protected through buffering. Buffers function as important transition zones between development and adjacent habitat areas. Habitat buffers serve to protect the habitat from the direct effects of nearby disturbances. Buffer areas provide protection for habitat from adjacent development in a number of ways (e.g., sheer distance, buffer configuration, topographic changes, vegetation in the buffer, fences at buffer edges, etc.), where the methods chosen depend in part on the desired functions of the buffer (e.g., reducing human impacts, preserving habitat, water quality filtration, etc.). When intensive urban uses are proposed adjacent to habitat areas (such as the commercial hotel project in this case), a primary buffering method is to provide adequate distance so as to limit direct disturbance and reduce the conveyance of human-generated impacts (such as noise, lights, movements, odors, debris, and other edge effects). Vegetation planted or present within the buffer can help to reduce these edge effects, and thereby minimize the necessary buffer width. Depending upon their design, buffers can also be a functional part of the ESHA acting as a transition zone from the more sensitive to less sensitive parts of a site. By minimizing disturbance to the resource from adjacent development, and by providing transitional habitat areas, buffers contribute to the health and vitality of functioning habitat areas such as the dunes in this case.

In most cases, a habitat buffer would be established prior to construction, and maintained throughout the life of the project. In this case, it is not possible to construct the development without temporary encroachments into ESHA. In order to minimize and mitigate these impacts, the project must be conditioned to require a construction plan that minimizes encroachments, uses excavated sand to re-establish natural dune contours. Unavoidable temporary impacts to habitat areas during construction will be mitigated through restoration of the Smith Avenue right-of-way.

To protect the habitat adjacent to the project over the long-term Special Condition 1 requires that a 25-foot dune buffer area be established on the property. A buffer of this width is needed to implement a viable dune restoration and stabilization program, and to shield the adjacent sensitive habitats from disruption by the project. A dune buffer of 25 feet also allows space for ongoing building maintenance activities, such as sand moving, window washing, painting, etc, to occur without further impacting adjacent habitat areas. A 25-foot buffer width will provide sufficient space for a “Bobcat excavator” or some other form of equipment to move and recontour blown sand which will likely accumulate on the property over time.

Special Condition 2 requires that the buffer area on the property be maintained, subject to a deed restriction that prohibits uses that are inconsistent with habitat protection and dune stabilization. These uses include dune restoration, landscaping, and stabilization activities, low intensity public access improvements, building maintenance, sand management, low impact fencing, and construction of an underground parking structure buried and re-contoured in a manner that blends with natural dune contours. The conditions of this permit will help restore dune habitat in the immediate project area as well as to minimize disruption to adjacent dune habitat throughout the life of the development. These conditions shall run with the land in order to ensure that future owners are aware of the constraints associated with this site.



Special Condition 3 requires the applicant to submit a plan to restore and stabilize the dunes within the Smith Avenue right-of-way. This is necessary to stabilize the dune formation, minimize ongoing sand manipulation associated with development at this location, and to offset impacts to dune habitat associated with project construction. This condition, coupled with an appropriate dune buffer, will avoid habitat disruptions to the identified resource consistent with the LCP. It is anticipated, however, that the restoration area will impact public use of the area by restricting pedestrian access that may cause trampling of vegetation within the restoration zone. Therefore, Special Condition 3 also requires that a dedicated public pedestrian path be provided within or immediately adjacent to the dune restoration area. Inclusion of a public pedestrian path will ensure that there is no physical obstructions of existing use patterns. Unauthorized vehicles accessing the dunes from Strand Avenue and Strand Way have caused disruptions to the dunes in this location. Thus, Special Condition 3 also requires the installation of general access controls (e.g. bollards, boardwalks, post and line fencing, signs, etc.) at the terminus of the Strand Way and Strand Avenue rights-of-ways to eliminate vehicular use of the dunes that may undermine the dune restoration efforts. It should be noted that any future proposal to abandon Smith Avenue for an alternative use and/or develop the road would be a discretionary action that would need to preserve and enhance dune habitat and must conform to the restoration goals and objectives prescribed through Special Condition 3 of this permit.

#### f. ESHA Conclusion

The project, as conditioned, is consistent with the LCP because it avoids significant disruption to sensitive dune habitat; protects and enhances the adjacent dune habitats through the implementation of a dune restoration and stabilization plan; minimizes disturbance of dune vegetation and landforms; and provides a buffer necessary to ensure the biological continuance of the dune ESHA. In addition, a deed restriction is required assuring resource protection in perpetuity within the dune buffer area. Only as conditioned is the project consistent with the dune ESHA protection provisions of the LCP.

## 2. Visual and Scenic Resources

#### a. Applicable Policies

***Policy 1 – Protection of Visual and Scenic Resources:*** Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

***Policy 2 – Site Selection for New Development:*** Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created “pockets” to shield development and minimize visual intrusions. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

***Policy 5 – Landform Alterations:*** Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND



*PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

***Policy 10 – Development on Beaches and Sand Dunes:*** *Prohibit new development on open sandy beaches, except facilities required for public health and safety (e.g., beach erosion control structures). Limit development on dunes to only those uses which are identified as resource dependent in the LCP. Require permitted development to minimize visibility and alterations to the natural landform and minimize removal of dune stabilizing vegetation [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

***CZLUO Section 23.05.034(d) – Landform alteration within public view corridors.*** *Grading, vegetation removal and other landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridor from collector or arterial roads. Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.*

b. Consistency Analysis

The LCP is protective of coastal zone visual resources, and specifically protective of the views to and along the ocean. Wherever possible, development is to “emphasize locations not visible from major public view corridors.” Landform alterations within public view corridors are to be minimized and finished surfaces are to blend with the natural terrain (Policy 5). LCP Policy 5 is implemented by CZLUO Section 23.05.034 related to landform alteration, which requires the contours of finished grading to blend with the adjacent natural terrain. The LCP likewise is protective of new development on sand dunes, requiring development to “minimize removal of dune stabilizing vegetation” (LCP Policy 10). These LCP policies taken together require that the impacts of new development within public viewsheds be minimized, and that new development within and adjacent to unique features of the landscape such as coastal dunes be integrated into the existing beach aesthetic. Therefore, questions of public view protection and dune landform alteration are central to the review of this project.

The Applicant’s site is one of the most visually prominent parcels in the Pier Avenue and Beach Area of Oceano. The site represents the northwestern “edge” of potentially developable land in the commercial area of Pier and Strand Avenues. The project would be highly visible from Pismo State Beach, Pier Avenue, and surrounding dune areas. In this case, an existing concrete block commercial building and asphalt parking lot has occupied this location for over 30 years. The new hotel building that would be constructed on the site would be three stories with a maximum building height of 35 feet. The parking garage would be located partially underground. Because the proposed project utilizes the entire parcel, the northern wall of the hotel would be constructed into the backside of the dune formation on the applicant’s property. In sum, the project would introduce a large vertical wall and structure into the dunes where none exists now.

To be consistent with the LCP a number of conditions are required. Special condition 5 requires a construction plan that minimizes construction activities in the adjacent dune areas. Not only will this allow the project to preserve the dune landform, but it will also minimize disturbance to dune stabilizing vegetation. To minimize the impacts of landform alteration consistent with the LCP, Special Condition 4 requires a sand management plan that keeps dune sands in the natural dune system and restores disturbed areas to predevelopment dune contours. Inclusion of a dune restoration and stabilization plan



(see Special Condition 3) maintains contours of the finished surface that will blend with adjacent natural terrain and achieve a consistent grade and natural appearance consistent with the LCP.

#### c. Visual Conclusion

Removing the existing abandoned building and replacing it with a larger and taller structure of a different design will change the scenic qualities of the area. The proposed hotel would increase massing visible from Pier Avenue and Pismo State Beach and will alter the natural dune landform on the northern edge of the property. Development of the hotel in its proposed location would require grading, vegetation removal, and dune landform alterations contrary to the scenic and visual protection policies required by the LCP. Therefore, the conditions of this permit require all elevations and exterior design elements to be consistent with the recently adopted Design Guidelines for commercial retail areas as specified in the Oceano Specific Plan. In addition, exterior finishes on the building are to be earthen tone colors that blend with the surrounding dune environment. Finally, to assure the consistency of the project with the visual resource provisions of the LCP, the conditions of approval establish a dune setback/buffer area necessary to avoid continued alteration of dune landforms, protect dune habitat areas that contribute to the scenic quality of the area, and allow for development that will blend in with adjacent natural terrain and achieve a consistent grade and natural appearance. Only as conditioned is the project consistent with the LCP.

### 3. Water Quality

#### a. Applicable Policies

***Policy 9 for Coastal Watersheds:*** *Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based in evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site-specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

***Policy 10 for Coastal Watersheds:*** *Site design shall ensure that drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

#### b. Consistency Analysis

Stormwater infrastructure is lacking in and around the project area. During the early stages of urbanization in Oceano it was overlooked because of the high infiltration rates of the sandy soils that tended to naturally dispose of runoff. However, as urbanization has increased, the capabilities of the underlying soil to absorb urban runoff have diminished.



Although a drainage plan is not included with the project, it is expected that site drainage would be collected and discharged toward the fronting streets, flowing onto the pavement and eventually to the beach and Pacific Ocean. Runoff from the site would be expected to contain typical runoff elements associated with urban commercial development, including some water and pollutant accumulation in the underground parking lot. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics (such as pesticides and herbicides).<sup>1</sup> Urban runoff can also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms. At a minimum, urban runoff pollutants would be added into the sandy dune and beach soils around the project site. Depending on the degree to which the sandy soils neutralized these constituent pollutants, remaining pollutants would make their way into the Pacific Ocean adversely impacting marine water quality.

According to the Soils Engineering Report prepared for the project (Earth Systems Pacific, September 24, 2003), the stability of excavations at the site is a concern. According to the report, dewatering will probably be needed during excavation, which can cause settlement of surrounding grounds and improvements. In this case, the groundwater in the area would need to be lowered for construction. To address dewatering discharge, Special Condition 5 (Construction Plan) requires that a dewatering plan be submitted with approval (or evidence that none is needed) from the Regional Water Quality Control Board prior to issuance of the permit. The purpose of this condition is to ensure that dewatering activities do not impact coastal water quality and marine resources as required by the LCP.

### c. Water Quality Conclusion

In sum, the project would generate typical urban runoff (including vehicular wastes from the underground parking lot). That runoff would likely be directed off site. In other words, the proposed project relies on offsite areas to filter and treat typical pollutants generated by the project. These areas would be degraded proportionally as a result. This is inappropriate and inconsistent with the LCP's water quality requirements. Therefore, Special Condition 6 is necessary for LCP conformance. Specifically, this condition requires that adequate construction BMPs are applied to prevent construction-related runoff and debris from degrading the beach area, and permanent drainage BMPs are required to control the volume, velocity and pollutant load of stormwater and other runoff leaving the developed site and to ensure that: all site drainage features and/or structures (e.g., pipes) are confined within the disturbance area and are prohibited in the dune ESHA areas; post-development peak runoff rates and volumes are maintained at levels similar to, or less than, pre-development conditions; all runoff is filtered and treated prior to its use for on-site irrigation or infiltration, or its discharge off-site; spill response materials are maintained on-site; and all drainage system elements are permanently operated and maintained (see Special Condition 6).

With these conditions, the project conforms to LCP marine resource and water quality protection requirements.

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<sup>1</sup> Pollutants of concern found in urban runoff include, but are not limited to: sediments; nutrients (nitrogen, phosphorous, etc.); pathogens (bacteria, viruses, etc.); oxygen demanding substances (plant debris, animal wastes, etc.); petroleum hydrocarbons (oil, grease, solvents, etc.); heavy metals (lead, zinc, cadmium, copper, etc.); toxic pollutants; floatables (litter, yard wastes, etc.); synthetic organics (pesticides, herbicides, PCBs, etc.); and physical changed parameters (freshwater, salinity, temperature, dissolved oxygen).



## 4. Hazards

### a. Applicable Hazard Policies

The applicable LCP provisions include Coastal Zone Land Use Ordinance (CZLUO) Section 23.07.022 requiring that new development proposed within the Airport Review Area be consistent with the adopted Airport Land Use Plan. CZLUO Section 23.07.022 states:

***CZLUO Section 23.07.022 - Limitation on Use:*** *Developments within areas covered by land use plans adopted by the San Luis Obispo County Airport Land Use Commission are limited to those identified in the plans as “compatible” and “conditionally approvable.” Projects conditionally approvable may be granted a permit only when in conformity with all conditions of the applicable airport land use plan or implementing rules adopted pursuant thereto.*

The conditions that must be satisfied to render conditionally approvable commercial land uses compatible in airport Area 3A, as listed in Appendix B of the Oceano Airport Land Use Plan, are summarized as follows:

#### **Conditions required for all land uses in Zone 3A**

1. *Usage shall be compatible with airport location.*
2. *Soundproofing where appropriate to reduce noise to acceptable level according to State guidelines.*
3. *No electromagnetic transmissions which would interfere with operation of aircraft.*
4. *All bulk storage of volatile or flammable liquid be underground.*
5. *An Avigational Easement shall be required for users.*

#### **Conditions required for commercial land uses in Zone 3A**

1. *Number of people using the facility be kept to a minimum.*

### b. Consistency Analysis

#### Airport Hazards and Compatible Uses

The primary airport land use compatibility issue associated with this project is the allowable number of people using the hotel building. The site is within Area 3A according to the Airport Land Use Plan (ALUP). This area is designated as the Inner Approach/Departure Zone for the Oceano Airport. The State Compatibility Guidelines, from the California Airport Land Use Planning Handbook provides a range of people per acre allowed on the site. For nonresidential uses, the Compatibility Guidelines indicate that projects within the Inner Approach/Departure Zone may allow a maximum land use density range of 25 to 40 persons per acre for rural/suburban areas and 40 to 60 persons per acre for urban areas. The Compatibility Guidelines do not specify the number of people per unit to use when converting these figures to the allowable number of motel rooms.

The table below shows the range of allowable number of motel units using the State Compatibility Guidelines. The calculation is based on the gross project size (including area in road right-of-ways), the number of people per acre, and the number of people per motel room. These calculations are



summarized in the table below:

Density Calculation – Number of Motel Units (Assumes 1-2 On-Site Employees)			
Project Size (Gross Area)	25 people per acre	40 people per acre	60 people per acre
18,960 sq.feet (.435 acres)	(10.89 people – 1.5 employees = 9.39 guests)	(17.37 people – 1.5 employees = 15.87 guests)	(26.11 people – 1.5 employees = 24.61 guests)
1.5 persons per room	6.26	10.58	16.40
2 persons per room	4.69	7.93	12.30
2.5 persons per room	3.75	6.34	9.84

As shown in the table above, the number of motel units allowed under the State Compatibility Guidelines range from 3.75 to 16.40. The Applicant has proposed a 16-unit hotel project. In this case, the project is considered to be within an urban area due to surrounding commercial development and the fact that the site is within the Urban Reserve Line. Thus, using a range of 40-60 people per acre is consistent with the LCP. As mentioned, the State Compatibility Guidelines do not specify the number of persons per room to use when converting to allowable units. If a lower persons-per-acre figure is used with and a higher persons-per-room figure, the number of units allowed could be reduced to roughly 6 to 10 units.

The Applicant has stated in meetings with Commission staff that any reduction in the number of units makes the project infeasible from an economic standpoint, although supporting data to confirm this assertion has not been presented. If the number of units were reduced the Applicant has suggested that the project footprint and scale of development would not change. In other words, the reduced number of units would be accommodated through larger rooms rather than a smaller scaled project. Therefore, reducing the number of units would not serve to further project coastal resources (e.g. by providing a larger dune buffer, or lessening the bulk and scale of the building), but rather, would reduce the number of people in the building for airport safety reasons. Other conditions can, and have been required to address the safety concerns without further reducing the number of units. It should also be noted that the project is a priority use that facilitates public access and recreational opportunities to the beach. Reducing the number of units, and in turn reducing the number of people using the hotel, competes with other LCP goals, namely to protect and promote public access and recreation at the beach in this area.

It is also reasonable to consider the timing of when people will be in the rooms. The figures analyzed represent the limits on the maximum number of people who might be present in the hotel during normal business hours. For a visitor-serving hotel project in a beach location such as this, one can assume that guests will check-in, then leave the premises for some time to enjoy the beach or other area attractions, and return later. Thus, the time most likely for the hotel to actually have the maximum number of people present would be at night when the guests are in their rooms or sleeping. This is also the time when the airport has little or no overflight activity, thereby reducing the degree of disruptions and safety





incompatibilities that might occur with the airport.

#### c. Conclusion

The proposed development falls within the sphere of influence of the Oceano Airport Review Area. The project limits the public's exposure to excessive noise and safety hazards by limiting interior noise levels to 45dBA or less and ensuring provisions of the California Noise Insulation Standards are met. In addition, the applicant is required to incorporate noise reduction devices such as "sound-rated" windows, acoustical treatment to exterior vents, and solid exterior doors into the project design. To satisfy other requirements for projects in Area 3A, the project has been conditioned to restrict electromagnetic transmissions that would interfere with operation of aircraft and requires that all bulk storage of volatile or flammable liquid be stored underground. Finally, the project is conditioned to include an Avigation Easement as required by the LCP (see Special Condition 8). This project approval retains these County required measures.

As conditioned, this aspect of the proposed development is consistent with the CZLUO Section 23.07.022 of the LCP.

## 5. Archeology

#### a. Applicable Policies

***Archaeology Policy 1:*** *The County shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD].*

***Archaeology Policy 4:*** *Development shall require a preliminary site survey by a qualified archaeologist knowledgeable in Chumash culture prior to a determination of the potential environmental impacts of the project. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.106 OF THE CZLUO].*

***Archaeology Policy 6:*** *Where substantial archaeological resources are discovered during construction of new development, or through non-permit related activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified archaeologist knowledgeable in the Chumash culture can determine the significance of the resources and submit alternative mitigation measures. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.140 AND 23.07.106 OF THE CZLUO].*

CZLUO Section 23.07.104 states:

#### ***23.07.104 Archaeologically Sensitive Areas:***

*To protect and preserve archaeological resources, the following procedures and requirements*



*apply to development within areas of the coastal zone identified as archaeologically sensitive.*

*a. Archaeologically sensitive areas. The following areas are defined as archaeologically sensitive:*

*(1) Any parcel within a rural area which is identified on the rural parcel number list prepared by the California Archaeological Site Survey Office on file with the county Planning Department.*

*(2) Any parcel within an urban or village area which is located within an archaeologically sensitive area as delineated by the official maps (Part III) of the Land Use Element.*

*(3) Any other parcel containing a known archaeological site recorded by the California Archaeological Site Survey Office.*

*b. Preliminary site survey required. Before issuance of a land use or construction permit for development within an archaeologically sensitive area, a preliminary site survey shall be required. The survey shall be conducted by an archaeologist knowledgeable in Chumash Indian culture and approved by the Environmental Coordinator. The purpose of the preliminary site survey is to examine existing records and to conduct a preliminary surface check of the site to determine the likelihood of the existence of resources. The report of the archaeologist shall be submitted to the Planning Department and considered in the evaluation of the development request by the applicable approval body.*

*c. When a mitigation plan is required. If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by the archeologist. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the applicable approval body.*

*d. Required finding. A land use or construction permit may be approved for a project within an archaeologically sensitive area only where the applicable approval body first finds that the project design and development incorporates adequate measures to ensure protection of significant archeological resources.*

*e. Archeological resources discovery. In the event archeological resources are unearthed or discovered during any construction activities, the standards of Section 23.05.140 of this title shall apply.*

**b. Consistency Analysis**

Archaeology Policies 1, 4, and 6 require surveys within designated archaeologically sensitive areas, protection of any resources that were identified, and protection of resources discovered during construction.



The project site is within an LCP designated Archaeological Sensitive (AS) combining designation area. A surface survey was performed as part of the Applicant's Initial Study. According to the study, no resources were identified within the proposed project site. However, the project site is currently paved and buried resources may be present under the existing asphalt paving. Although the possibility of subsurface archaeological resources are considered low due to the absence of surface resources, buried archaeological resources would be impacted during subsurface excavation activities.

#### c. Archaeology Conclusion

Because the area in general is archaeologically sensitive, Special Condition 7 requires a qualified archaeological monitor and Native American representative approved by the Executive Director to be present during construction or pre-construction activities that involve ground disturbance. If archaeological resources are discovered at the project site during any phase of construction, work must cease until a mitigation plan, prepared by a qualified professional archaeologist in coordination with interested Native Americans, is approved by the State Historical and the Executive Director of the Commission. The plan must provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and be fully implemented.

Only as conditioned is the project consistent with the LCP.

## 6. Public Access

#### a. Applicable Public Access Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

***Section 30210:*** In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

***Section 30211:*** Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

***Section 30212(a):*** Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

***Section 30223:*** Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

#### b. Consistency Analysis



The Coastal Act requires that all projects proposed between the first public road and the sea be analyzed for compliance with the public access and recreation policies of the Coastal Act. In general, the project is consistent with the relevant Coastal Act policies that require the maximization and protection of public access and recreation opportunities. The proposed hotel project is located in close proximity to a popular State Park beach with access to the hotel site provided by a major public roadway (Pier Avenue). The project is a high priority visitor-serving recreational use located in an area envisioned for this type of commercial development. The project is uniquely situated between nearby campgrounds, RV parks, public restrooms, commercial businesses, open dunes areas, and the beach. There is a network of informal trails linking these areas. Some of these trails meander past, and in some areas across, the applicant's property. Informal access in some areas has been persistent enough to create walking trails clearly visible on the ground and in aerial photos.

In terms of public access impacts of the project, the new motel will clearly bring increased commercial and visitor-serving use of public beach resources, particularly Pismo Beach State Park. As approved under this permit, peak use periods of the new development can be expected to bring up to 20 automobiles into the development area. Thus, the increased impacts on public resources would be significant, even if only some of the visitors associated with these cars take advantage of the site's close proximity to the beach.

Another public access issue involves road improvements around the project. The Oceano Specific Plan identifies a commercial structure in the general area of the proposed project and identifies the need for areawide circulation. While the plan shows Smith Avenue (adjacent to and north of the project site), it also identifies this area a sensitive dune habitat. While Smith Avenue, if developed, may help provide areawide circulation, this area is also an active sand dune formation containing sensitive habitat. Constructing Smith Avenue would require significant disturbance of dune habitat and the road would be difficult to maintain due to constant encroachment of wind blown sand. Vehicular access improvements to Smith Avenue and Strand Avenue raise significant concerns. To address this concern, the County proposed a "mid-block" access route along the southern side of the site. This appears to be a reasonable way to address areawide circulation and avoid adverse resource impacts.

The project has been conditioned to ensure continued public use of the adjacent right-of-ways, as well as the network of informal footpaths in and adjacent to the project site. Special Condition 1 limits structural development within the rights-of-ways and requires that they remain available for public use. Special Condition 3 requires the applicant to develop an access path as part of the dune restoration area or on the property immediately adjacent to the restoration area. In this case, there is clearly a need to manage access in and around the area consistent with the dune restoration goals and objectives. As an alternative to access within the restoration zone, Special Condition 2 would also allow public access to occur in the 25-foot buffer area on the Applicant's property. There are plenty of opportunities to create more formal linkages between surrounding recreational sites, this property, and the shoreline. For example, a pedestrian path/boardwalk could be constructed at the toe of the existing dune features as a way to stabilize the dunes and at the same time provide a valuable access link and project amenity for the area. The dune restoration and stabilization plan, along with any access improvements, shall be coordinated with State Parks prior to issuance of the coastal permit.

#### c. Access Conclusion



In conclusion, the proposed project is a high priority visitor-serving project that will allow more of the public to access the shoreline. The project site is uniquely situated and presents a number of access and recreation opportunities. As conditioned, the project is consistent with the Coastal Act and LCP regarding public access and recreation.

## 7. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

